THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 27322 of 2005

Oral order:

The petitioner, who is working as ADC with the respondents-APSRTC, during 1992, availed loan of Rs.48,000/- towards purchase of House Plot at Kadiri, agreeing to repay the same in instalments of Rs.785/- each spread over a period of ten years. Even before he repaid the loan amount, in 1998, he was removed from service. According to the petitioner, as on the date when he was removed from service, he had already paid an amount of Rs.44,000/-, and he had to pay Rs.52,000/-. After his removal from service, the petitioner states that the respondents recovered the balance amount from his sureties, and only an amount of Rs.8,000/- was outstanding. While so, the petitioner states that by virtue of the award dated 25.05.2005 of the Labour Court, he was reinstated into service, and immediately after his reinstatement, the respondents issued letter dated 07.11.2005 informing him that as on 30.11.2005, an amount of Rs.93,840/- is outstanding against his loan account, and if the same is not paid, an amount of Rs.9,525/- shall be recovered w.e.f. 30.06.2006.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The learned counsel for the petitioner submits that while the petitioner was out of employment, the respondents recovered the balance loan amount from his sureties, and as on the date when the petitioner was reinstated into service, only an amount of Rs.8,000/- was outstanding. He submits that the respondents having recovered the balance loan amount from the sureties of the petitioner, cannot show the amount recovered from his sureties as outstanding. He submits that the petitioner has to pay balance amount of only Rs.8,000/-, and the action of the respondents in seeking to recover an amount of Rs.93,840/- from the petitioner, having recovered the same from his sureties, is illegal and arbitrary.

The respondents filed counter. The learned Standing Counsel for the respondents reiterating the counter averments submitted that the petitioner availed loan of Rs.43,000/- agreeing to repay the loan amount in ten years with monthly instalments of Rs.785/-. As the petitioner was removed from service, the balance unpaid instalments,

were recovered from his sureties as per the terms and conditions of the loan. He submits that the terms and conditions of the loan agreement, which the petitioner entered with the respondents at the time of availing loan, stipulate that the amounts so recovered from the sureties, is subject to refund if the borrower repays the same or shall be recovered from the salary of the borrower in the event of his reinstatement and in the event of his retirement, the same shall be recovered from his terminal benefits. Inasmuch as the petitioner pursuant to his reinstatement did not pay the amount, the respondents as per the terms and conditions of the loan agreement, sought to recover the outstanding loan amount, and no exception can be taken thereto.

The petitioner does not dispute the fact that, he having availed loan from the respondents, did not repay the same, for he was removed from service. While the petitioner was out of employment, the respondents, admittedly, recovered the loan amount from his sureties. It is the contention of the petitioner that the respondents having recovered the balance loan amount from his sureties, cannot show the recovered amount as still outstanding. It is the case of the respondents that the amounts so recovered from the sureties of the petitioner is subject to refund upon the borrower repaying, and it is as per the terms and conditions of the loan agreement. Whether or not the respondents in terms of the loan agreement, having recovered the balance loan amount from the sureties of the petitioner, are still entitled to show the recovered amount as outstanding against the loan amount of the petitioner, is a disputed question of fact, which cannot effectively be gone into in a petition under Article 226 of the Constitution of India. The only remedy available to the petitioner is to approach the competent civil court, and get his grievance adjudicated.

For the foregoing reasons, I am not inclined to interfere with the action of the respondents in seeking to recover the loan amount from the salary of the petitioner, for repaying the same to his sureties, from whose salary, the respondents had recovered the unpaid loan amount.

Hence, the writ petition is dismissed. No costs.

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N.V. RAMANA, J.

Date: 27th June, 2006.

KSR/NSR